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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of

Petition of the Multifamily Broadband Council
Seeking Preemption of Article 52 of the
San Francisco Police Code

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MB Docket No. 17-91

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COMMENTS OF PRIVATEL INC.

I. INTRODUCTION.

Privatel Inc. (Privatel or the Company) hereby submits its initial comments to the Federal Communications Commission ("FCC" or "Commission") in response to the May 4, 2017 Public Notice in the above-referenced proceeding. The Commission's Public Notice seeks input on a petition submitted by the Multifamily Broadband Council ("MBC"). MBC's petition seeks a declaratory ruling that Article 52 of the San Francisco Police Code is preempted because Article 52 conflicts with the Commission's regulatory frameworks governing competitive access to inside wiring in multi-tenant buildings, bulk billing arrangements, and forced network sharing obligations, and because federal law and policy have "occupied the field."

For the reasons described below, the Commission should grant MBC's petitions.

II. BACKGROUND.

Privatel, which was formed in 1998 and is based in Spring Lake Hts, New Jersey, is a private cable operator that provides video, voice and Internet services to residential multi-tenant properties, in direct competition with larger, well-funded entities. Privatel provides these services to a total of over one hundred properties in fourteen states, including universities, hospitals, assisted living communities, and hotels. These properties represent a total of over

sixteen-thousand units and over 100,000 students, patients and guests. Our services are highly competitive, we offer satellite delivered television via an ala carte service with hundreds of channels to choose from. The company also provides digital broadband, high-speed internet, and cellular telephone service. Privatel is offering services equal to or better than those of its competitors at competitive rates, notwithstanding its financial disadvantages.

Although Privatel does not currently provide service in San Francisco, the Company is compelled to submit these comments on MBC's petitions due to Article 52's clear anticompetitive effect and the negative consequences that would follow if similar laws are adopted in other cities.

III. ARTICLE 52 IMPOSES SEVERE CONSTRAINTS ON THE ABILITY OF COMPETITIVE PROVIDERS TO SERVE MULTI-TENANT BUILDINGS.

As MBC correctly observes, Article 52 distorts the competitive landscape by overriding voluntary, contractual arrangements that are preconditions to the financing required for buildouts in multi-tenant buildings. Unlike large, deep-pocketed corporations like Google, Privatel depends on third-party financing in order to deploy our facilities on multi-tenant properties. For smaller providers like Privatel who cannot self-fund their operations, such financing is critical given the substantial capital outlay required to construct and launch a system on a multi-tenant property. Simply put, if we are not able to demonstrate a likelihood of success with regard to a particular project, the bank or other lender will not fund it.

In Privatel's experience, one of the key indicators of likely success is a valid, enforceable right of entry ("ROE") agreement with a property owner that grants our company protected and undisturbed use of wiring inside the building(s). As an example over the last two years the company has spent over one million dollars (\$1,000,000) upgrading to a state-of-the-art high speed digital broadband system in over eighty percent (80%) of our contracted properties.

Privatel would not have acquired the financing for this upgrade if it was not for the long term right of entry agreements.

Another mechanism that our company has used to secure financing is a bulk billing arrangement, under which the property owner purchases service and provides it as an amenity for all tenants at a steep discount off of regular retail pricing. As the Commission has recognized, bulk billing arrangements allow companies like ours to offer reduced prices to customers by spreading fixed costs among many subscribers using common facilities. However, we are only able to offer such discounts if we have the ability to serve all of the tenants on a given property. If Privatel or any service provider has a competitor within the same property then the cost would increase and the subscriber will end up paying more for the same service.

If allowed to stand, Article 52 and other laws like it would eliminate these sorts of arrangements and make it extremely difficult for smaller competitive providers to obtain financing and compete against better-funded competitors who do not need outside financing. As a result, in many cases smaller competitive service providers like ours will not be able to secure funding to construct an on-site network, and will withdraw from San Francisco (or markets with similar laws) altogether.

Furthermore, where a smaller competitive provider has successfully negotiated an agreement for exclusive access to the property owner's wiring, Article 52 nullifies that arrangement by mandating that the property owner allow all comers to share his or her wiring. This wire sharing mandate reduces the incentive for companies like ours to invest in upgrading our existing network facilities in multi-tenant properties.

Finally, the FCC's inside wiring rules have played a major role in facilitating competition for communications services in Privatel's service territories. Accordingly, the Company shares

MBC's concerns that Article 52 will penalize property owners who have taken advantage of the FCC's rules, dissuade other property owners from exercising their rights under the FCC's rules in the first place, or incentivize property owners to try and avoid Article 52 by ceding their ownership rights over inside wiring to incumbent providers.

IV. ARTICLE 52 EXACERBATES THE DIGITAL DIVIDE.

As MBC has noted, bulk billing arrangements are typically used by property owners and service providers to provide affordable video and broadband services to shared-living environments like hospitals, retirement and nursing homes, student housing, and lower or fixed-income residents. This is especially true in our service territory since most of the properties that the company services are in these above mentioned institutions.

As noted above, bulk billing arrangements will cease to exist under Article 52. As a result, consumers who depend on such arrangements will likely receive services at higher prices and poor customer service.

V. ARTICLE 52 IMPAIRS THE ABILITY OF COMPETITIVE PROVIDERS TO MAINTAIN A HIGH LEVEL OF CUSTOMER SERVICE.

In Privatel's experience, a significant portion of service interruptions and related problems in multi-tenant properties are caused by issues relating to inside wiring. Because Article 52 does not address how multiple providers on the same property must behave towards each other, the ordinance will only make these problems worse.

Specifically, the use of common wiring for two signals usually results in interference, which leads to service cutoffs and, eventually, loss of customers.

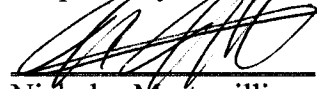
Moreover, Privatel includes service level agreements ("SLAs") in our agreements with property owners. A typical SLA includes mandatory 24/7 deadlines for repairing service interruptions and outages, completing installations, and enforceable standards to maintain

minimum bandwidth to a property. SLAs are an effective way for our company to distinguish itself from large providers that do not offer service level guarantees. Privatel for years has had a subscriber contact system in place whereby our technical support team can be contacted twenty-four hours a day seven days a week with a guaranteed immediate response. Under Article 52, however, we cannot commit to an SLA because we do not have protected and undisturbed control over the wiring being used to deliver our services to customers.

VI. CONCLUSION.

For the reasons discussed above, the Commission should find that Article 52 is preempted by federal law and policy.

Respectfully submitted,



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